

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE DEPARTMENT OF LABOR AND INDUSTRY**

In the Matter of Eric Michael Clark,  
individually, and d/b/a E.M. Clark  
Construction

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis at the Office of Administrative Hearings in Minneapolis on November 16, 2006, at 1:30 p.m.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). There was no appearance by or on behalf of Eric Michael Clark or E.M. Clark Construction ("Licensee", "Respondent"). The hearing record closed on November 16, 2006.

**STATEMENT OF ISSUE**

Whether disciplinary action should be taken against the license of the Respondent for engaging in an act demonstrating he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under license granted by the Commissioner, by failing to satisfy a judgment against "E.M. Clark Construction"?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On October 5, 2006 a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges was mailed to the Respondent at his/its last known address - 212 Juniper Street, Brainerd, MN 56401. The Notice scheduled a Prehearing Conference for November 16, 2006.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges contains the following language, on page four:

1. Respondent's failure to appear at the prehearing conference or contested case hearing may result in a finding that Respondent is in default, that the Department's allegations in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. The Respondent did not appear at the November 16, 2006 Prehearing Conference. He/It did not contact the Department, the Office of Attorney General or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Licensee.

4. The allegations set forth in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction herein pursuant to Minn. Stat. §§ 14.50 and 326.91.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter, and the Department has complied with all procedural requirements.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled Prehearing Conference.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proved.

5. Based on the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges, the Respondent has violated Minn. Stat. §§ 45.027, subd. 7(a)(4) and 326.91, subd. 1(6). As a result, he is subject to discipline by the Minnesota Department of Labor and Industry.

6. An Order by the Commissioner of Labor and Industry imposing disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. §§ 45.027, subd. 7(a)(1) and 326.91, subd. 1.

Based on the Conclusions, the Administrative Law Judge makes the following:

## **RECOMMENDATION**

IT IS RECOMMENDED that appropriate disciplinary action be taken against the license of Eric Michael Clark, d/b/a E.M. Clark Construction.

Dated this 15th day of December, 2006.

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Default

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.